IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO.2774 OF 2006

M/s.Kakda Impex (India) Pvt. Ltd. ..Petitioner.

V/s.

Union of India & Ors. ..Respondents.

Mr.V.S. Nankani with M.R. Bay for petitioner.

Mrs.S.V.Bharucha for respondents.

CORAM : H.L.GOKHALE AND
J.P.DEVADHAR, JJ.

DATED : 1ST DECEMBER, 2006.

P.C. :-

Heard Mr.Nankani in support of this petition. Mrs.Bharucha appears for the respondents. Petition seeks to challenge the order passed by the Tribunal dated 7th September, 2006 whereby the Tribunal has clarified that the pre-deposit which was sought under earlier order dated 30th September, 2004 comprising Rs.50 lakhs towards duty and Rs.25 lakhs towards the penalty was independent of the amount of Rs.54 lakhs which the petitioner claims to have otherwise deposited.

2. The case of the petitioner is that Rs.50 lakhs were deposited when one of the Directors of the petitioner was arrested in the same transaction and they made a deposit of Rs.4,46,284/- when the

petitioner moved the Settlement Commission. All these submissions were made when a Petition was filed bearing Writ Petition No.3322 of 2004 and the Division Bench by its order dated 23/2/2005 granted liberty to the petitioner to move the Tribunal to seek clarification. The Tribunal gave its clarification on 24/3/2005.

3. The petitioner filed a second petition bearing Writ Petition No.1465 of 2005 by making grievance that the Tribunal has only referred to the earlier order of the High Court and in fact not given a clarification. This Court permitted the petitioner to move the Tribunal once again by passing an order on 6th June, 2005. Now, a third order has been passed by the Tribunal making it clear that the amount which was sought as pre-deposit was independent and after considering the amount of Rs.54 lakhs which the petitioner claims to have deposited as pointed out above. The liability on the petitioner is to the tune of Rs.4,54,34,776/- which is under the order in original passed by the Commissioner of Central Excise. An appeal has been filed by the petitioner to the Customs Excise Service Tax Appellate Tribunal, Mumbai concerning this liability which arose due to the clandestine clearance of grey fabric of 89.83 lakhs sq. mtrs. It is the discretion of the Tribunal to direct the pre-deposit and the Tribunal has clarified that it

is independent of the amount which has been deposited earlier. The Tribunal has also observed that petitioners are seeking a modification while seeking a clarification and that could not be permitted. We agree. There is no reason to interfere. Petition is dismissed.

4. After this order is passed, Mr.Nankani makes a request that the petitioner be permitted to deposit the amount as directed by the Tribunal within 4 weeks. Mrs.Bharucha appearing for the respondents leaves it to the Court. Accordingly, we permit the petitioner to deposit this amount of Rs.75 lakhs by the end of December, 2006. If the amount is so deposited, the appeal will be revived and will be heard by the Tribunal in January, 2007, otherwise the appeal stands dismissed.

(H.L.GOKHALE, J.)

(J.P.DEVADHAR, J.)